

36227
DO

SERVICE DATE – LATE RELEASE SEPTEMBER 15, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 260X)¹

TENNESSEE RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN SCOTT COUNTY, TN

STB Docket No. AB-290 (Sub-No. 259X)

TENNESSEE RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND CAMPBELL COUNTIES, TN

Decided: September 15, 2005

By petition filed on February 28, 2005, in STB Docket No. AB-290 (Sub-No. 260X), Tennessee Railway Company (TNR), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 27.01-mile line of railroad between milepost TE-0.95 near Oneida, and milepost TE-27.96 near Nick's Creek, in Scott County, TN (the northern segment). Notice of the filing was served and published in the Federal Register on March 18, 2005. In a decision served June 17, 2005, the petition for exemption was granted, subject to environmental, public use, trail use, and standard employee protective conditions.

The line involved in STB Docket No. AB-290 (Sub-No. 260X) is part of a 42-mile railroad line that extends from Oneida to Devonia, TN. On December 30, 2004, in STB Docket No. AB-290 (Sub-No. 259X), TNR filed a notice of exemption to abandon the line between Nick's Creek (milepost TE-27.96) and Devonia (milepost TE-42.00) (the southern segment). Notice of the exemption was served and published in the Federal Register on January 19, 2005. On May 20, 2005, National Coal Corporation (NCC) timely filed an offer of financial assistance (OFA) to purchase the 14.04-mile southern segment. By decision served on May 25, 2005, NCC was found to be financially responsible and the effective date of the abandonment exemption was postponed pending resolution of the OFA process. In a decision served on June 17, 2005, in STB Docket No. AB-290 (Sub-No. 260X), the Board held the OFA process in STB Docket No. AB-290 (Sub-No. 259X) in abeyance to afford NCC (or any other interested party) the

¹ These proceedings are not consolidated, but are factually related. A single decision is being issued for administrative convenience.

opportunity to file an OFA to acquire the northern segment, and the Board provided that, if an OFA were filed for that segment, the OFA process would proceed concurrently for the purchase of both segments.

On June 27, 2005, NCC timely filed an OFA to purchase the northern segment. In a decision served on June 30, 2005, NCC was found financially responsible and the effective date of the exemption authorizing abandonment of the northern segment was postponed to permit the OFA process to proceed. The Board also recommenced the OFA process as to the southern segment, and told the parties that they may negotiate regarding both segments for a 30-day period starting on June 27. Furthermore, the Board made any request to establish the terms and conditions of the purchase of one or both segments due by July 27, 2005.

On July 12, 2005, NCC, NSR, and TNR jointly filed a petition for extension of the July 27 deadline to provide additional time for negotiations. The parties asked that the Board make a request to set terms and conditions due by August 15, 2005. The Board granted the extension in a decision served on July 14, 2005. The Board further extended the deadline to September 15, 2005, when it granted the same parties' August 10 extension request in a decision served on August 12, 2005.

On September 14, 2005, NCC, NSR, and TNR jointly filed another petition for extension of the deadline by which a request to set terms and conditions is due. Although the parties are making progress toward reaching an agreement concerning purchase of the lines, they state that they need more time for negotiations. The parties state that there are still several issues to be resolved, and that the parties have had trouble concluding negotiations because of scheduling conflicts created by Hurricane Katrina. The petitioners believe that an extension until September 30, 2005, will afford them the opportunity to successfully complete negotiations. They note that allowing continued negotiations will facilitate a private agreement concerning transfer and operation of the lines, an outcome which would conserve administrative resources and minimize the need for federal regulatory intervention.

The requested extension is reasonable and will be granted. Accordingly, the deadline for the parties to request the Board to establish terms and conditions for a purchase will be extended to September 30, 2005.

It is ordered:

1. The request to extend the time period for either party to request the Board to establish the terms and conditions of a purchase is granted.
2. If NCC and the carrier cannot agree on a purchase price, either party may request the Board to establish the terms and conditions of a purchase on or before September 30, 2005.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary